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No. 90-626

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1990

PACIFIC LIGHTING CORPORATION,
FREDRICKS DEVELOPMENT CORPORATION, and
DUNN PROPERTIES CORPORATION,

Petitioners,

v.

MWG, INC.,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF FOR PETITIONERS

This supplemental brief is submitted pursuant to Rule 15.7 of the Rules of this Court to address the Court's decision in *Pacific Mutual Life Insurance Co.* v. *Haslip*, No. 89-1279 (Mar. 4, 1991).[1]

In *Pacific Mutual*, the Court held that Alabama's elaborate post-verdict procedure for reviewing punitive damage awards and the "detailed substantive standards," slip op., at 17, applied by the Alabama courts thereunder "impose[ ] a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages" for purposes of the Due Process Clause of the Fourteenth Amendment. *Id.*, at 18. Because the California system that produced the $2,000,000 punitive damage award in this case wholly lacks such constraints, it is facially invalid under the Due Process Clause as interpreted in *Pacific Mutual*.

As demonstrated in the petition, at 9-11, California juries are entrusted with extremely broad discretion to inflict punitive damages. In California, "[t]he channeling of just the correct quantum of bile to reach the correct level of punitive damages is, to put it mildly, an unscientific process . . . complicated by the lack of objective criteria from either the Legislature or the courts as to 'how much' is necessary to punish and deter." *Devlin* v. *Kearny Mesa AMC/Jeep/Renault, Inc.*, 155 Cal. App. 3d 381, 388, 202 Cal. Rptr. 204 (1984). As respondent itself points out, Supp. Br. in Opp., at 1-2 n.1, California juries are expressly instructed, as was the jury in this case, that "[t]he law provides no fixed standards as to the amount of . . . punitive damages, but leaves the amount to the jury's sound discretion. . . . ." Moreover, unlike the Alabama scheme at issue in *Pacific Mutual*, which precludes the jury from considering the defendant's wealth when calculating punitive damages,[2] the California system

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[1] This brief also responds to the Motion to Vacate Stay of Execution and Supplemental Brief filed by respondent on March 7, 1991.

[2] *See Pacific Mutual*, slip op., at 16.

requires and encourages the jury to do so,[3] and plaintiffs often do "enjoy a windfall because they have the good fortune to have a defendant with a deep pocket." *Pacific Mutual*, slip op., at 19. Thus, the discretion of California juries to determine the amount of punitive damages to inflict in a particular case is at least as broad, if not broader, and more constitutionally suspect than the punitive discretion of Alabama juries.

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[3] The California standard "approved" punitive damage jury instruction, which was given in this case, requires the jury to consider the "defendant's financial condition." *See California Jury Instructions (BAJI)* 14.71, at 205 (7th ed. 1986); *see* Supp. Br. in Opp., at 1-2 n.1.

Respondent points out that, as in Alabama, *see Pacific Mutual*, slip op., at 3 n.1, juries in California are instructed to impose punitive damages to achieve the goals of retribution and deterrence, Supp. Br. in Opp. at 3, but these concepts are not explained in an understandable fashion to the jury. The standard instruction provides "no information to the jury about criminal fines for comparable conduct or the range of punitive damages awards in similar cases. Nor [does] it identify the limitations dictated by retributive and deterrent principles, or advise the jury to refrain from awarding more than necessary to meet those objectives." *Pacific Mutual*, slip op., at 7 (O'Connor, J., dissenting). Rather, the jury is vaguely told to consider the "reprehensibility" of the defendant's conduct and the defendant's wealth when calculating the punitive damage award. *See* Supp. Br. in Opp. at 1-2 n.1. "Guidance like this is scarcely better than no guidance at all," *Browning-Ferris Industries of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2923 (1989) (Brennan, J., concurring), and, in fact, is mere "platitude." *Pacific Mutual*, slip op., at 14 (Scalia, J., concurring in the judgment). Consequently, although the instruction tells the jury that the punitive award must bear a "reasonable relationship" to compensatory damages, Supp. Br. in Opp., at 3, the California courts have repeatedly recognized that that relationship is an inherently meaningless constraint on the discretion of judges and juries to impose punishment in that State. *See, e.g., Gagnon* v. *Continental Casualty Co.*, 211 Cal. App. 3d 1598, 1604, 260 Cal. Rptr. 305 (1989) (observing that the relationship between compensatory and punitive damages has "little inherent meaning" and that a ratio of "2,000 to 1 [has] been found to be reasonable"); *Downey Savings & Loan Association* v. *The Ohio Casualty Insurance Co.*, 189 Cal. App. 3d 1072, 1099, 234 Cal. Rptr. 835 (1987) (because the jury is entitled to punish a defendant for its antisocial conduct generally, not just for conduct directed at the plaintiff, the ratio between compensatory and punitive damages carries "little weight"), *cert. denied*, 486 U.S. 1036 (1988).

The Court's conclusion in *Pacific Mutual* that the Alabama punitive damage system did not violate the Due Process Clause was predicated in substantial part upon that State's unique and rigorous post-verdict review procedure for "scrutinizing punitive awards." Slip op., at 17. That procedure first requires the trial court to "conduct[] a post-verdict hearing," *id.*, at 19, and to articulate specifically its reasons for setting aside a punitive damage award or refusing to do so. *See id.* The Supreme Court of Alabama has developed a number of "objective criteria," *id.*, at 20, and "detailed substantive standards," *id.*, at 17, to be applied by the trial court during post-verdict review, which this Court in *Pacific Mutual* summarized as follows:

> (a) whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred; (b) the degree of reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct; (c) the profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; (d) the "financial position" of the defendant; (e) all the costs of litigation; (f) the imposition of criminal sanctions on the defendant for its conduct, these to be taken in mitigation; and (g) the existence of other civil awards against the defendant for the same conduct, these also to be taken in mitigation.

Pacific Mutual, slip op., at 18. On appeal, the Supreme Court of Alabama itself evaluates the punitive damage award under these same standards and compares the punishment to punitive awards in similar cases, thereby "provid[ing] an additional check on the jury's or trial court's discretion." *Id.*, at 17.

Post-verdict review procedures in California contrast sharply with the Alabama system. As respondent candidly acknowledges, the trial court does not perform an objective

review of the jury's punitive damage verdict, but rather "[s]it[s] as a thirteenth juror," Supp. Br. in Opp. at 3, who, in the complete absence of the kind of substantive standards applied by Alabama trial courts, is entitled to exercise its own broad and subjective discretion to punish. California trial courts need not, and generally do not even attempt to, explain their rationale for upholding massive punitive fines.

On appeal, "[a]ll presumptions favor the correctness of the verdict and judgment," *Devlin*, 155 Cal. App. 3d, at 388, and the trial court's determination that a punitive damage award is not excessive is "accorded great weight." *Id.*; *see also Bertero* v. *National General Corp*, 13 Cal. 3d 43, 64, 529 P.2d 608, 118 Cal. Rptr. 184 (1974). "An award of punitive damages will be reversed as excessive only when the entire record viewed most favorably to the judgment indicates the award was the result of passion and prejudice." *Downey*, 189 Cal. App. 3d, at 1099; *see, e.g.*, *Walker* v. *Signal Companies, Inc.*, 84 Cal. App. 3d 982, 997, 149 Cal. Rptr. 119 (1978) ("To reverse, an appellate court must ' ". . . conclude that recovery is so grossly disproportionate as to raise a presumption that it is the result of passion and prejudice." ' ") (citation omitted). In *Pacific Mutual*, this Court strongly suggested that such standardless and highly deferential appellate review of punitive damage verdicts will not survive scrutiny under the Due Process Clause. Slip op., at 17 n.10.[4]

The California Courts of Appeal in recent years have generally deferred to the "wide discretion," *Downey*, 189 Cal. App. 3d, at 1097, of juries to impose punitive damages and have routinely affirmed seven- and eight-digit punitive verdicts, often in "unpublished" or "depublished" opinions

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[4] Unlike the Alabama Supreme Court, which reviews punitive damage awards pursuant to numerous objective and detailed substantive criteria, California appellate courts emphasize that "determining the proper amount of punitive damages" is an intensely subjective and " 'fluid process,' " *see Devlin*, 155 Cal. App. 3d, at 390-91, and therefore focus only upon the same three general factors considered by the jury, *see supra* note 3, when determining whether an award is excessive. *See, e.g.*, *Downey*, 189 Cal. App. 3d, at 1097-1100.

that shield their analysis from public scrutiny. *See* Pet., at 18 & n.11. At the same time, the Supreme Court of California has consistently refused to exercise discretionary review to scrutinize punitive damage awards on any basis, constitutional or otherwise, and, indeed, has not examined a punitive damage award for excessiveness since its 1979 decision in *Egan* v. *Mutual of Omaha Insurance Co.*, 24 Cal. 3d 809, 598 P.2d 452, 157 Cal. Rptr. 452 (1979). Thus, that court has completely abdicated any responsibility for ensuring some principle of reasonable uniformity in the punitive damage verdicts coming out of the California intermediate appellate courts.

The Court of Appeal in this case concluded that the California punitive damage system is facially "constitutional under ... the due process provision of the Fourteenth Amendment." Pet. App. A, 12a. This Court's decision in *Pacific Mutual* casts serious doubt on that conclusion. Accordingly, this petition should be granted and the case either set for plenary consideration or vacated and remanded to the California Court of Appeal for reconsideration in light of *Pacific Mutual*.

March 11, 1991

Respectfully submitted,

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